

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF NEW YORK

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THOMAS HART, LISA HART, KEVIN MCDONALD,  
SARAH MCDONALD, 1667 WESTERN AVENUE,  
LLC and RED-KAP SALES, INC.,

Docket No.: 1:20-CV-475  
(MAD/DJS)

Plaintiffs,

- against -

TOWN OF GUILDERLAND, PLANNING BOARD  
AND ZONING BOARD OF APPEALS OF  
GUILDERLAND, PYRAMID MANAGEMENT GROUP,  
LLC, RAPP ROAD DEVELOPMENT, LLC and  
CROSSGATES RELEASECO, LLC,

Defendants.

**NOTICE OF MOTION**

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PLEASE TAKE NOTICE that upon the Declaration of Robert S. Rosborough IV, Esq., dated May 25, 2020, the exhibits annexed thereto, the accompanying memorandum of law, and all prior proceedings herein, Defendants Town of Guilderland, Planning Board and Zoning Board of Appeals of Guilderland, Pyramid Management Group, LLC, Rapp Road Development, LLC and Crossgates Releaseco, LLC (collectively, "Defendants") will move this Court at the United States District Court for the Northern District of New York located at the James T. Foley U.S. Courthouse, Suite 509, 445 Broadway, Albany, NY 12207 on June 30, 2020, or as soon thereafter as counsel may be heard for an order: (1) pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6), dismissing the Complaint filed by Plaintiffs Thomas Hart, Lisa Hart, Kevin McDonald, Sarah McDonald, 1667 Western Avenue, LLC and Red-Kap Sales, Inc. in its entirety, with prejudice; (2) awarding the Pyramid Defendants their reasonable attorneys' fees pursuant to 33 U.S.C.

§ 1365(d), 16 U.S.C. § 1540(g)(4), and 42 U.S.C. § 1988(b);<sup>1</sup> and (3) granting Defendants such other and further relief as the Court deems just and proper.

PLEASE TAKE FURTHER NOTICE that, pursuant to this Court's scheduling order dated May 18, 2020, Plaintiff's opposition, if any, shall be filed and served on or before June 15, 2020; and

PLEASE TAKE FURTHER NOTICE that, Defendants intend to submit a reply; and

PLEASE TAKE FURTHER NOTICE that, pursuant to this Court's scheduling order dated May 18, 2020, Defendants' reply, if any, shall be filed and served on or before June 19, 2020.

Dated: May 25, 2020

WHITEMAN OSTERMAN & HANNA LLP

By: /s/ Robert S. Rosborough IV  
Robert S. Rosborough IV (Bar Roll # 516667)  
Attorneys for Defendants Pyramid Management  
Group, LLC, Rapp Road Development, LLC and  
Crossgates Releaseco, LLC  
One Commerce Plaza  
Albany, New York 12260  
(518) 487-7600  
rrosborough@woh.com

GUILDERLAND TOWN ATTORNEY

By: /s/ James P. Melita  
James P. Melita, Esq.  
Attorney for Town of Guilderland, Planning Board  
and Zoning Board of Appeals of Guilderland  
P.O. Box 339  
Guilderland, New York 12084

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<sup>1</sup> The Town of Guilderland Defendants do not join the request for an award of reasonable attorneys' fees.